IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 22448 of 2004

Between:

Udatha Satyanarayana, S/o. Narayana,
R/o. Tallapudi, West Godavari District.

..... PETITIONER

AND

1. The Superintendent of Police, S.P. Office,

West Godavari District at Eluru.
2. The Station House Officer, Tallapudi Police Station,
Tallapudi Mandal, West Godavari District.
3. Bandaru Ramakrishna, S/o Venkata Suryam,
Pattu Saleelu, Steno in Integrated Fisheries Project,

Beach Road, Govt. of India, Visakhapatnam - 1,
residing in Santhipuram near Gurudwara Junction,

D.No. 50-88-6/1, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ order or direction in the nature of Writ of Mandamus, declaring the proceedings in C.NO. 7292/C1/2004 dated 12-11-2004 issued by the 1st respondent as illegal and set aside the same and consequently direct the official respondent to conduct through enquiry and trial in C.C. No. 1209/03 on the file of II Addl. J.F.C.M. Kovvur in a fair and reasonable manner.

Counsel for the Petitioner: MR.N.SUBBA RAO

Counsel for the Respondents 1 and 2: GP FOR HOME

Counsel for the Respondent No.3: MR. V.MALLIK

The Court made the following:

O R D E R:

The petitioner is the complainant who filed the police report against the third respondent on which a case in Crime No.76 of 2003 of Thallapudi Police Station of West Godavari District was registered against the third respondent. After investigation, a charge sheet was filed in C.C.No.1209 of 2003 on the file of the Second Additional Judicial First Class Magistrate, Kovvur. Admittedly, the third respondent is the owner of White Colour Maruthi Car bearing No.Ap.31/AB/1855 of 1988 model.

It is the case of the petitioner that he is a financier and he has provided finance of Rs.58,000/- to one Mr.A.Durga Prasad through Venkata Naga Kishore. But, the said A.Durga Prasad did not pay the instalments properly. The petitioner made a complaint stating that LWs.10 and 12 (A.Durga Prasad and N.Nagendra @ Nageswararao respectively) obtained the finance through the mediator-LW-11 (B.Venkata Naga Kishore) on the said Car. But, the instalments have not been paid and all of them have cheated the petitioner. Accordingly, he requested to take action against them. On the said complaint, the police investigated the case and during the course of investigation, it is revealed that the car originally belongs to the third respondent herein and he has requested his close friend LW-4 (K.Ramabrahmam @ Chowdhary) to sell the Maruthi Car to anybody as he is in need of money and handed over the sale letter and 'C' book to LW-4 (K.Ramabrahmam @ Chowdhary) and on that LW-4 went to Guntur and sold the car through LW-9 (K.Venkateswararao) and LW-9 sold the car to LW-12 (N.Nagendra @ Nageswararao). LW-12 in turn sold the car to LW-10 (A.Durga Prasad). LW-10 financed the same with LW-1 (U.Satyanarayana) and the same was registered in the name of LW-10 (A.Durga Prasad) in R.T.A. Office at Eluru on 24.02.2003. In the meanwhile, the third respondent made a report before the IV Town (Crime) Police Station, Visakhapatnam vide Cr.No.35 of 2003 for the offences under Sections 406 and 420 I.P.C. and investigated into. During the course of investigation, on the complaint made by the third respondent herein, the said car was seized from LW-10 at Eluru and the same was handed over to the third respondent. But, the case, which

was investigated on the report of the third respondent was referred as 'mistake of fact' by the IV Town (Crime) Police Station, Visakhapatnam on 13.06.2003.

The learned counsel appearing for the third respondent submits that he has protested against the action of the police in referring the case 'as mistake of fact' and therefore the police re-investigated the case and filed the charge sheet in C.C.No.360 of 2004 on the file of the III Metropolitan Magistrate, Visakhapatnam for the offences under Sections 406 and 420 I.P.C. in Cr.No.35 of 2003 of IV Town (Crime) Police Station, Visakhapatnam.

C.C.No.1209 of 2003 is pending on the file of the II Additional Judicial First Class Magistrate, Kovvur for the offence under Section 420 I.P.C. in Cr.No.76 of 2003 of Tallapudi Police Station.

The learned counsel appearing for the petitioner submits that, in fact, there is no offence committed by the petitioner for the offence under Section
420 I.P.C. as the sale letter used by the said K.Ramabrahmam did not contain the signature of the third respondent and he has sold the car through LW-6 (Kota Ravi Kumar @ Ravi) he being the owner and therefore LW-6 was not at all cheated. But, because of the earlier case filed by the petitioner against Ramabrahmam during the course of investigation, the car was seized and merely because the car was seized in a criminal case, it cannot be said that he has cheated LW-6. However, I am not inclined to consider the merits of the case, as admittedly the trial is pending before both the Court of law.

The only question that arises for consideration in this instant case is as to whether the action of the first respondent-Superintendent of Police, West Godavari in according permission for withdrawal of the prosecution against the third respondent in Cr.No.76 of 2003 for the offence under Section 420 I.P.C. of Thallapudi Police Station is justified or not ?

The first respondent-Superintendent of Police, West Godavari vide his Memorandum bearing C.No.7292-C1-200, dated 12-11-2004 accorded permission for withdrawal of the prosecution against the third respondent by only one sentence order, which is extracted as below:

> *"Permission is hereby accorded for withdrawal of prosecution against the accused Sri Bandaru Ramakrishna in Cr.No.76/2003 under Section 420*

I.P.C. of Thallapudi Police Station."

It is stated by the learned counsel appearing for the petitioner that previously the learned Additional Public Prosecutor gave an independent opinion on 12.03.2003 stating that there is no public interest involved in the case and therefore, the case cannot be withdrawn and it is not a fit case for withdrawal. But, thereafter, the second respondent obtained second opinion from the Additional Public Prosecutor, Kovvur with regard to withdrawal of prosecution against the third respondent and submitted the same before the Superintendent of Police requesting him to give necessary instructions to the Additional Public Prosecutor to withdraw the prosecution in the said case in the interests of justice and in the interests of innocent car owner i.e. the third respondent herein. It is stated that the disputed signatures with regard to sale letter used by Ramabrahmam were sent for the expert's opinion and the expert gave an opinion that the said signatures do not belong to the third respondent.

Based on these contentions, the third respondent filed Criminal Petition No.2906 of 2004 on the file of this Court to quash the proceedings arising out of C.C.No.1209 of 2003 on the file of the II Additional Judicial First Class Magistrate, Kovvur. But, this Court declined to quash the same holding that the disputed questions of facts cannot be gone into and a perusal of the charge sheet *prima facie* discloses the offence under Section 420 I.P.C. and if for any reason, if the charges are disproved against the third respondent and if the third respondent proves to be innocent, it is open to him to initiate appropriate action, either civil or criminal, against the persons responsible for such an enquiry and for prosecution.

When this Court declined to quash the said proceedings on the said contentions advanced by the learned counsel appearing for the third respondent, I am of the opinion that it is not open for the police to sit over the judgment of this Court and withdraw the prosecution without assigning any reasons and without considering the contentions contained in the charge sheet.

Therefore, I am of the opinion that withdrawal of the case against the third respondent is unsustainable and accordingly, the Writ Petition is allowed. No order as to costs.

However, I am of the opinion that when the petitioner has disputed seriously about the signatures as regards the sale letter used by the said Ramabrahmam for selling his car and filed a report on which the police investigated into the same and filed a

charge sheet in C.C.No.360 of 2004 against the said Ramabrahmam on the file of the III Metropolitan Magistrate at Visakhapatnam, it is just and proper to try both the criminal cases by any one of the judge.

Therefore, I am of the view that it is just and necessary to transfer C.C.No.1209 of 2003 pending on the file of the II Additional Judicial First Class Magistrate, Kovvur for being tried along with CC 360 of 2004 pending on the file of the III Metropolitan Magistrate, Visakhapatnam.

Accordingly, the learned Principal District and Sessions Judge, West Godavari at Eluru is directed to withdraw the CC 1209 of 2003 on the file of the II Additional Judicial First Class Magistrate, Kovvur and send it for simultaneous trial along with CC 360 of 2004 on the file of the III Metropolitan Magistrate at Visakhapatnam, for disposal according to law.

It is also made clear that any observations made by this Court either in this case or in the quash proceedings shall not be taken into consideration while disposing of both the criminal cases and the learned III Metropolitan Magistrate at Visakhapatnam may try both the criminal cases simultaneously and dispose of the same as early as possible.

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V. ESWARAIAH, J

Dated:11-03-2005.

ccm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday, the Eleventh day of March, Two thousand and Five.

ASSISTANT REGISTRAR

To

1. The Superintendent of Police, S.P. Office,

West Godavari District at Eluru.
2. The Station House Officer, Tallapudi Police Station,
   Tallapudi Mandal, West Godavari District.
3. 2 CCs to G.P for Home, High Court of A.P. Buildings, Hyderabad (O.U.T)

4. 2 CD copies.

5. The Principal District and Sessions Judge, West Godavari at Eluru.

6. The II Addl.Judicial Magistrate of First Class, Kovvur.

7. The III Metropolitan Magistrate, Vsakapatnam.

8. The station House Officer,IV Town,(Crime) Police Station, Visakapatnam

9. The Station House Officer, Tadepallygudem Police Station.